

Tax Information

Bulletin

Issued Quarterly

December 2003

California State Board of Equalization
P.O. Box 942879, Sacramento, CA 94279-0001

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New laws take effect

The following summaries reflect significant legislative changes enacted in 2003 affecting tax programs administered by the Board. The changes are effective January 1, 2004, unless otherwise indicated. For copies of bills, please write to the Legislative Bill Room, State Capitol, Room B-32, Sacramento, CA 95814. You can also download copies from www.leginfo.ca.gov/bilinfo.html.

Components of the statewide 7.25 percent sales and use tax rate will change. Assembly Bill 7X (Stats. 2003, Chapter 13), operative July 1, 2004, among its provisions, (1) increases the state portion of the sales and use tax rate by 0.50 percent, (2) decreases the local sales and use tax rate by 0.50 percent, and (3) creates the Fiscal Recovery Fund and requires that the revenues from the new 0.50 percent state sales and use tax be deposited into this fund and dedicated for the repayment of the deficit funding bond.

Sales and use tax exemption for sales of meals and food products by nonprofit veteran's organizations. Assembly Bill 189 (Stats. 2003, Chapter 721) provides, effective April 1, 2004, a sales and use tax exemption

for sales of meals and food products furnished or served by any nonprofit veteran's organization for purposes of fundraising, as specified.

Taxpayers may now report qualified use tax on their income tax returns. Senate Bill 1009 (Stats. 2003, Chapter 718) authorizes, for purchases made on or after January 1, 2003, and through December 31, 2009, a person to report qualified use tax on their California income tax return. *Qualified use tax*, for purposes of using an income tax return to report tax, would not include use tax due on some purchases, such as vehicles and vessels that are registered with the Department of Motor Vehicles.

This bill also provides that any person who is otherwise required to hold a seller's permit, or to register with the Board pursuant to existing sales and use tax laws, is not eligible to report use tax on an income tax return and must report use tax directly to the Board.

Conditions for obtaining refunds of the manufacturer's investment credit have been clarified. Senate Bill 1064 (Stats. 2003, Chapter 606) amends section 6902.2 of the Sales and Use Tax Law to clarify that a claim for refund, filed in lieu of claiming the manufacturers' investment tax credit on returns filed with

the Franchise Tax Board, may not be for an amount in excess of the amount of the credit that could have been used to reduce the *net tax* or *tax*, as defined in law, and that any credit carried over under the franchise and income tax laws may not be refunded until the credit carried over could be applied to reduce the *net tax* or *tax*, as applicable. This amendment applies to claims for refund filed on or after August 7, 2003.

Voluntary use tax reporting. Assembly Bill 1741 (Stats. 2003, Chapter 697) limits, until January 1, 2006, the period in which the Board may issue a billing for unreported use tax for *qualified purchasers* from eight years to three if a determination is made that the failure to report and pay the tax was due to reasonable cause. A *qualified purchaser* means a person or firm that voluntarily files a use tax return to report purchases of tangible goods from a retailer outside this state for use in this state. Certain other conditions must be met by the purchaser.

The bill also provides relief of any penalties imposed upon qualified purchasers if the Board determines that the failure to timely report or remit the tax was due to reasonable cause.

(NEW LAWS continued on page 2)

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Sidelights

■ Field Office News: Torrance & Long Beach

In September we mentioned that the Third Equalization District Office had moved from Torrance to Long Beach. We should have added that the regular Sales and Use Tax District Office in Torrance has not moved and still serves the public at 680 Knox Street.

You should also know there is a new Sales and Use Tax Branch Office in Long Beach, where taxpayers can make payments and obtain permits. That office is located at 100 West Broadway, Suite 305, 90802-4431. Their phone number is (562) 901-2483, and their FAX number is (562) 495-9029.



■ Annual filers—don't miss out! You can receive all four bulletins each year.

If you file tax returns only once a year, you do not receive each quarterly *Tax Information Bulletin*. As a result, you may miss some important news such as upcoming law changes, regulation revisions, e-filing, and more.

You can visit our website to read current and past bulletins as they are posted. If you want to receive paper copies of each quarterly issue, write or e-mail us and ask to be added to Mailing List #15.

Write to

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Contact us at

www.boe.ca.gov/info/email.html

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Reinstatement of sales and use tax exemption for sales of bunker fuel. Senate Bill 808 (Stats. 2003, Chapter 712), provides, effective April 1, 2004, a sales and use tax exemption for sales of fuel and petroleum products (bunker fuel) sold to water common carriers under certain conditions.

Public passenger transportation vehicle exemption sunset date extension. Senate Bill 760 (Stats. 2003, Chapter 597) extends the sunset date of January 1, 2004, until January 1, 2009, for the existing sales and use tax exemption for the sale and lease-back of public passenger transportation vehicles when sold or leased by a transit authority, special district, or governmental entity.

Managed audit program. Assembly Bill 1043 (Stats. 2003, Chapter 87) grants the Board the authority to utilize a Managed Audit Program in which a taxpayer could perform an audit of their own books and records, with limited guidance from the Board, in order to determine any tax deficiencies.

New licensing requirement related to cigarettes or tobacco products.

Assembly Bill 71 (Stats. 2003, Chapter 890) establishes the Cigarette and Tobacco Products Licensing Act of 2003. Among other things, the Act provides that retailer sellers, wholesalers, and distributors cannot sell cigarettes or tobacco products in California unless they are licensed by the Board. This licensing requirement is in addition to the Board's current permit and licensing requirements.

Qualified retailers must obtain a separate license for each location where retail sales of cigarettes or tobacco products are made. There is a one-time license fee of \$100 per location. The Board will be notifying retailers about this new requirement in the near future. If you are a retailer of cigarettes or

tobacco products and do not receive a notice, you must still apply for and obtain the required license. Applications must be filed by April 15, 2004, and retailers must be licensed by June 30, 2004.

Additional information will be made available on the Board's website.

New "e-waste" recycling fee. Senate Bill 20 (Stats. 2003, Chapter 526) imposes, on and after July 1, 2004, a covered electronic waste recycling fee upon the first sale in the state of a covered electronic device to a consumer by a retailer. A retailer selling a covered electronic device to a consumer is required to collect a covered electronic waste recycling fee from the consumer. A *covered electronic device* is defined to mean, in part, a cathode ray tube, cathode ray tube device, flat panel screen, or any other similar video display device with a screen size that is greater than four inches in size measured diagonally and which the Department of Toxic Substances Control determines, when discarded or disposed, would be a hazardous waste, as specified. Depending on the screen size, the fee ranges from \$6 to \$10 per device.

Partial exemption for manufacturing equipment expires January 1, 2004

Revenue and Taxation Code section 6377, *Property used in manufacturing and related activities*, provides a partial exemption from the state portion of the sales and use tax on the sale or use of certain tangible personal property to a qualified person for use in manufacturing operations. A qualified person generally includes persons that started a new trade or business (described in codes 2011 to 3999 of the 1987 Standard Industrial Classification Manual) in this state on or after January 1, 1994.

(MANUFACTURING continued on page 4)

When are charges by caterers taxable?

Regulation 1603, *Taxable Sales of Food Products*, was revised in 2002 to clarify the application of tax to charges by caterers. If you are a caterer, please go online to www.boe.ca.gov/news/tib03.htm for a supplemental article that explains how tax applies to caterers' charges for food and drinks; serviceware, tables, linens and other items used to prepare and serve food and drinks; sound systems, dance floors, lighting, and other items not used to serve food and drinks; planning and coordinating events; and use of premises.

You can also request a copy of the supplemental article by calling our Information Center.

Construction contracts: Can subcontractors accept resale certificates from prime contractors?

The Board has seen cases where large businesses, including governmental contractors, have erroneously issued resale certificates to subcontractors who furnish and install material or fixtures.

Unfortunately, **Regulation 1521, *Construction Contractors***, does not generally allow for the issuance of resale certificates to relieve subcontractors from their sales and use tax obligations (see *Exception* in next column).

As a general rule, a subcontractor who furnishes and installs materials or fixtures for a prime contractor is either the consumer or retailer of the property installed and may not accept a resale certificate from a prime contractor.

Materials. Construction contractors are consumers of materials which they furnish and install in a contract to improve real property. However, if the contract (other than a U.S. government contract—see next column) explicitly provides for transfer of title to the materials prior to installation, and the sales price of the materials is separately stated in the contract, the contractor is making a retail sale of materials.

When subcontractors make a retail sale of installed materials, they are considered the final seller of the materials. Consequently, subcontractors may not accept resale certificates from prime contractors, interior decorators, department stores, or others for these materials.

Fixtures. In general, construction contractors (other than U.S. government contractors—see below) are the final retailers of fixtures which they furnish and install. Again, the subcontractor may not accept a resale certificate from the prime contractor for fixtures furnished and installed by the subcontractor.

Exception: A construction contractor furnishes and installs a fixture for a person, other than the owner or lessor of the realty, who intends to lease the fixture in place as tangible personal property and pay tax measured by rental receipts. In this case, the contractor may take a resale certificate from the lessor at the time of the transaction, and the sale to the lessor will be considered a sale for resale.

U.S. government contracts. Contractors who contract with the U.S. government are consumers of materials and fixtures they install. A subcontractor working on a U.S. government construction contract may not accept a resale certificate from the prime contractor.

The application of tax to construction contracts can be complex. For more information, including examples of items classified as *materials* and *fixtures*, see Regulation 1521, *Construction Contractors* and publication 9, *Tax Tips for Construction and Building Contractors*. Both documents are available online at www.boe.ca.gov.

Sidelights

■ Know your rights

As a taxpayer, you have many rights under the Sales and Use Tax Law. These include the right to know how the law affects you; be treated fairly, courteously, and promptly, and question the actions and decisions of Board staff and officers that affect your business operations.

Of course, along with those rights, you have certain responsibilities, including the responsibility to keep informed about tax laws and regulations; report and pay taxes when due; and maintain adequate records of your business operations.

For more information on your rights, please order publication 70, *The California Taxpayers' Bill of Rights*. Call our Information Center or go online for a copy.

■ Civil behavior in trying times

Some observers have noted that civility is decreasing in our society as our lives become more complex. We know that you may find yourself frustrated with the difficulties of the tax law or pressed for time when you're dealing with our staff. Still, we ask that you treat our employees just as you would like to be treated in a business situation. If a statement made to a Board employee seems like a threat—even if made in jest—it will be referred to our Internal Security and Audit Division for investigation.

■ Ethics at work—"thank you" is enough

During the holiday season, many of you offer gifts to your customers, suppliers, and others with whom you do business. We must ask, however, that you not extend your generosity to our employees. A simple "Thank You" or "Happy Holidays" will do—and will be much appreciated. Board policy prevents our employees from accepting gifts of any type.

Sales and leases of vehicles to foreign consuls

Beginning June 1, 2003, auto dealers are required to contact the U.S. Department of State, Office of Foreign Missions (OFM) when selling or leasing a vehicle to a foreign consul. The OFM will provide a letter to the dealer to approve or deny the tax exemption for each vehicle sold to a foreign consul. Auto dealers must retain a copy of the OFM letter and tax identification card to support a tax-exempt sale of a vehicle to a foreign consul. Whether or not the tax exemption is granted, all vehicles owned by diplomatic missions must be registered with the Department of State. To verify the tax exempt status of a foreign consul, or for additional information, please contact the OFM at their California regional offices: San Francisco (415) 744-2910, or Los Angeles (310) 235-6292.

(MANUFACTURING continued from 1)

The law also provided that the partial tax exemption would expire if the total non-aerospace manufacturing employment in this state had fallen below 100,000 jobs, as determined by the Employment Development Department (EDD). The exemption would end January 1 of the year following that determination. According to EDD, non-aerospace manufacturing jobs fell below the 100,000 threshold on January 1, 2003. As a result, effective January 1, 2004, the partial exemption will expire.

Retailers and qualified persons may not accept nor offer any "Section 6377 Manufacturer's Exemption Certificates" for sales made after December 31, 2003. Current holders of those certificates will receive a separate notice that their certificates will not be valid for transactions on and after January 1, 2004.

New or revised reference material

Sales and Use Tax Publications

- 35 Tax Tips for Interior Designers and Decorators (August 2003)
- 71 California City and County Sales and Use Tax Rates (October 2003)
- 76 Audits (July 2003)
- 80 Electronic Funds Transfer Program: Sales and Use Taxes (August 2003)
- 103 Sales for Resale (August 2003)
- 105 District Taxes and Delivered Sales (August 2003)
- 108 When Is Labor Taxable? (June 2003)
- 110 California Use Tax Basics (September 2003)
- 114 Consignment Sales (August 2003)
- 117 Filing a Claim for Refund (June 2003)

Sales and Use Tax Regulations

- 1553 Miscellaneous Repair Operations (effective June 26, 2003)
- 1592 Eyeglasses and Other Ophthalmic Materials (effective August 17, 2003)
- 1707 Electronic Funds Transfer (effective June 26, 2003)
- 1803.5 Long-Term Leases of Motor Vehicles (effective July 26, 2003)

Translated Publications

- 25-S Tax Tips for Auto Repair Garages and Service Stations (Spanish) November 2002
- 33 Making Sales in California (January 2003)
 - 33-AC (Arabic) 33-CN (Cambodian) 33-HG (Hmong) 33-PI (Punjabi) 33-TG (Tagalog)
- 101-S Sales Delivered Outside of California (Spanish) January 2003
- 103-S Sales for Resale (Spanish) August 2003
- 105-S District Taxes and Delivered Sales (Spanish) August 2003
- 107-S Do You Need a Seller's Permit? (Spanish) May 2003
- 110-S California Use Tax Basics (Spanish) September 2003
- 112-S Purchases from Out-of-State Vendors (Spanish) May 2003
- 113-S Coupons and Sales Tax (Spanish) May 2003
- 115-S Applying Sales Tax to Tips (Spanish) May 2003

For More Information All telephone numbers are toll-free.

Internet

www.boe.ca.gov ■ www.taxes.ca.gov

Information Center

800-400-7115
Telephone devices for the deaf
800-735-2929 (TDD) ■ 800-735-2922 (Voice)
800-400-7115 (Choose automated services.)

Requests for Fax Copies

888-225-5263 ■ www.boe.ca.gov

Seller's Permit Verification

888-324-2798 ■ www.boe.ca.gov

Taxpayers' Rights Advocate

888-334-3300

Tax Evasion Hotline

www.leginfo.ca.gov

State Legislation

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TOBACCO
TO MINORS IS
Illegal**
To report illegal sales, call
1-800-5-ASK-4-ID